

## STATE OF WASHINGTON

## POLLUTION CONTROL HEARINGS BOARD

WARREN A. BERG, et al.,

Appellants,

v.

HB No. 70-24

KING COUNTY WATER DISTRICT  
NO. 105, and DEPARTMENT OF WATER  
RESOURCES, STATE OF WASHINGTON,

Respondents.

FINAL ORDER

This matter came before the Board for hearing on April 24, 1975, at the Board's offices in Lacey, Washington. King County Water District No. 105 was represented by its attorney Stephen C. Watson, the Department of Ecology was represented by Wick Dufford, Assistant Attorney General. None of the appellants appeared.

At the request of counsel present, witnesses for respondents were sworn, testimony was taken and statements by counsel were heard.

WAC 173-08-165(3) adopted by this Board, requires dismissal of an appeal if the moving party fails to appear at the scheduled hearing unless manifest injustice will result or good cause be shown for such failure to appear. Appellants, though given adequate notice of the hearing, have not communicated with the Board, nor made any

1 attempt to excuse their failure to appear. The Board, upon review  
2 of the record, finds no reason to conclude that manifest injustice  
3 will result from the entry of an order concluding this matter at  
4 this time.

5 This case was commenced before the Department of Water Re-  
6 sources on July 23, 1969, prior to the creation of this Board.  
7 Subsequently, on July 1, 1970, the Department of Ecology assumed  
8 the functions of the Department of Water Resources pursuant to  
9 chapter 43.21A RCW, and this Board came into existence to hear and  
10 decide appeals with respect to, inter alia, decisions and orders  
11 of the Department of Ecology. Pursuant to the Washington Supreme  
12 Court's decision in ITT Rayonier, Inc., v. Department of Ecology,  
13 78 Wn.2d 700 (1970), administrative cases pending before predeces-  
14 sors of the new Department of Ecology were transferred to this  
15 Board for adjudication. The instant case was among those so trans-  
16 ferred.

17 The case involves an appeal of the granting of a Ground Water  
18 Application (No. 9886) to the water district for the withdrawal  
19 of water from two wells in the vicinity of Lake Sawyer. The appel-  
20 lants are residents of the general neighborhood who alleged inade-  
21 quacies in the investigation of this application by the Department  
22 of Water Resources. Their position was that not enough was known  
23 to ensure that the groundwater withdrawals by the water district  
24 would not adversely affect the level of Lake Sawyer as well as  
25 nearby wells utilized for domestic purposes.

26 At the time the Board received this case, proceedings were  
27 being held in abeyance under the terms of a consent order entered

1 into by the parties calling for an interim study of the effects  
2 of the district's wells on Lake Sawyer and nearby wells. The  
3 Board, by an order entered on October 5, 1971, extended the time  
4 for this study.

5 The study was conducted, gathering over more than two and  
6 one-half years, data on the levels of Lake Sawyer on water levels  
7 in an observation well and on water levels in selected domestic  
8 wells around the lake -- all during the pumping of the district's  
9 wells.

10 Based on the testimony of respondent's witnesses, the results  
11 of the study and recent field checks in the area show that no  
12 effect on the lake or neighboring wells has been found as a result  
13 of the operation of the district's wells. There is no evidence to  
14 the contrary.

15 Therefore, the Board, in accordance with WAC 173-08-165(3),  
16 and on the record before it, hereby dismisses this appeal with  
17 prejudice and affirms the order of the Department of Water Resources  
18 approving Ground Water Application No. 9886. This decision shall  
19 operate as an adjudication on the merits.

20 The matter is remanded to the Department of Ecology with  
21 instructions to issue a ground water permit in accordance with the  
22 agency findings and decision on Ground Water Application No. 9886.

23  
24  
25 J  
26 FINAL ORDER

1 DATED this 3rd day of June, 1975.

2  
3 POLLUTION CONTROL HEARINGS BOARD

4  
5 Chris Smith  
6 CHRIS SMITH, Chairman

7  
8 Walt Woodward  
9 WALT WOODWARD, Member

10  
11 W.A. Gissberg  
12 W.A. GISSBERG, Member

13 Presented by:

14 SLADE GORTON  
15 Attorney General

16 Wick Dufford  
17 WICK DUFFORD  
18 Assistant Attorney General

19 APPROVED:

20 Stephen A. Watson  
21 STEPHEN A. WATSON  
22 Attorney for King County Water  
23 District No. 105  
24  
25  
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FINAL ORDER